

JEFFREY F. KELLER (SBN 148005)
jfkeller@kellergrover.com
SARAH R. HOLLOWAY (SBN 254134)
sholloway@kellergrover.com
KELLER GROVER, LLP
1965 Market Street
San Francisco, California 94103
Tel: (415) 543-1305 / Fax: (415) 543-7861

JOHN G. JACOBS (*PRO HAC VICE*)
jgjacobs@jacobskolton.com
BRYAN G. KOLTON (*PRO HAC VICE*)
bgkolton@jacobskolton.com
JACOBS KOLTON, CHTD.
55 West Monroe Street, Suite 2970
Chicago, Illinois 60603
Tel: (312) 427-4000 / Fax: (312) 268-2425

DAVID SCHACHMAN (*PRO HAC VICE*)
ds@schachmanlaw.com
**LAW OFFICES OF DAVID
SCHACHMAN, P.C.**
55 West Monroe Street, Suite 2970
Chicago, Illinois 60603
Tel: (312) 427-9500 / Fax: (312) 268-2425

Attorneys for Plaintiff
BEVERLY NUNES
and the Putative Class

DAVID H. KRAMER (SBN 168452)
dkramer@wsgr.com
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 / Fax: (650) 493-6811

TONIA OUELLETTE KLAUSNER
(*PRO HAC VICE*)
tklausner@wsgr.com
BRIAN M. WILLEN (*PRO HAC VICE*)
bwillen@wsgr.com
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1301 Avenue of the Americas, 40th Floor
New York, NY 10019-6022
Tel: (212) 999-5800 / Fax: (212) 999-5899

Attorneys for Defendant
TWITTER, INC.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BEVERLY NUNES, individually and on behalf
of a class of similarly situated individuals,

Plaintiff,

v.

TWITTER, INC.,

Defendant.

Case No: 3:14-cv-02843-VC

**JOINT FURTHER CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Date: February 7, 2017

Time: 2:30 p.m.

Place: San Francisco Courthouse
Courtroom 4, 17th Floor
(Telephonic)

Judge: The Honorable Vince Chhabria

The parties to the above-entitled action hereby jointly submit this JOINT FURTHER CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER pursuant to the Court's August 30, 2016 minute Order scheduling a case management conference (Dkt. No. 109) and the Clerk's January 25, 2017 Notice rescheduling the case management conference (Dkt. No. 111).

1. Prior Case Management Statements and Schedule:

On December 4, 2014, the Parties filed a Joint Case Management Statement (Dkt. No. 45), that addressed information requested by the Standing Order For All Judges of the Northern District of California dated July 1, 2011, including *inter alia* information concerning the Parties' respective positions regarding jurisdiction and service of process, the relevant facts and legal issues, motions, amendment of the pleadings, disclosures, evidence preservation, ADR and settlement, and trial by magistrate. At the initial case management conference held on December 9, 2014, the Court stayed any class-related proceedings until after Plaintiff's individual claim is resolved. (Dkt. No. 48).

2. Stay of the Case Pending Certain FCC Proceedings and Appeals

Following the Court's ruling on Twitter's motion to dismiss (Dkt. No. 44), the Parties filed a stipulation for the entry of a protective order governing discovery in the case (Dkt. Nos. 46 and 47). Following the December 9, 2014 case management conference, the Parties commenced discovery. In February of 2015, the Parties participated in a mediation before the Honorable Read Ambler (ret.) and on March 3, entered into a stipulation to stay the case until June 2, 2015 in order to explore a possible settlement (Dkt. No. 52), which stay the Court so ordered (Dkt. Nos. 53 and 54). Shortly before the stay was to expire, the FCC announced an imminent ruling on a host of long-pending petitions that dealt with various matters of contention in this case, and the Parties entered into a Stipulation to stay the case until September 3, 2015 to obtain the forthcoming FCC ruling and such clarification of issues as it might bring (Dkt. No. 55) and the Court so ordered that request (Dkt. No. 56). Because it took longer than expected for the FCC to publish its ruling, the Parties entered into a stipulation to amend and continue the stay until September 17, 2015 (Dkt. No. 57) and the Court so ordered that request (Dkt. No. 58). On July 10, 2015 the FCC released its written Declaratory Ruling and Order, FCC 15-72. Among other

1 rulings pertinent to this action, the FCC interpreted the terms “automatic telephone dialing
 2 system,” and “prior express consent of the called party.” Those and other aspects of the FCC
 3 Order are the subject of multiple appeals that have been consolidated in the U.S. Court of Appeals
 4 for the District of Columbia. See *ACA Int’l v. FCC*, No. 15-1211 (D.C. Cir.) (consolidated with
 5 Nos. 15-1214, 1218, 1244, 1278).

6 In light of the uncertainty created by the pending appeals of the FCC Order, the Parties
 7 decided to continue the stay of the case with respect to the other issues, but to litigate the
 8 Plaintiff’s individual claim in the first instance with regard to the “maker of the call” issue
 9 discussed below and an affirmative defense asserted by Twitter that it was immune from liability
 10 under the TCPA as an interactive computer service provider under the Communications Decency
 11 Act, 47 U.S.C. §230(c)(1) (the “CDA”) since the Parties anticipated that those two limited issues
 12 would require minimal discovery. The Parties filed a Stipulation and Proposed Order to that effect
 13 on September 8, 2015 (Dkt. No. 60), which the Court so ordered on September 10, 2015 (Dkt.
 14 No. 61).

15 **3. Proceedings With Respect To “The Maker Of The Call” and the CDA**

16 Per the foregoing Stipulation, the parties proceeded with limited discovery and proceeded
 17 to work through and file in March of 2016 a Stipulation Of Undisputed Facts In Connection With
 18 Cross Motions For Summary Judgment (Dkt. No. 69), and thereafter filed and briefed cross-
 19 motions for summary judgment (Dkt. Nos. 73, 85, and 89). On July 1, 2016, the Court issued its
 20 Order on the cross-motions, granting Plaintiff’s motion for summary judgment and denying
 21 Twitter’s cross-motion for summary judgment (Dkt. No. 98). Twitter thereafter filed a motion
 22 seeking certification of the July 1 Order under 28 U.S.C. 1292(b). (Dkt. No. 100.) The motion
 23 was fully briefed (Dkt. Nos. 103 and 104), and on August 25, 2016 the Court denied the motion.
 24 (Dkt. No. 106)

25 On August 25, 2016, the Parties filed a Further Joint Case Management Statement
 26 requesting to continue to the stay of proceedings in this case pending the consolidated appeal
 27 from the FCC Order discussed in Paragraph 2 above upon which the stay has been based (Dkt.
 28 No. 107) and the Court so ordered that request (Dkt. No. 109). In the meantime, the United

1 States Court of Appeals for the District Of Columbia heard oral argument on October 16, 2016 in
2 the consolidated appeal. Although the parties do not know when the Court of Appeals will rule,
3 they are informed that the median time for that Court from the date of oral argument to date of
4 ruling is 3.6 months. <http://www.uscourts.gov/statistics-reports/judicial-business-2015-tables>.
5 As of this date, the United States Court of Appeals for the District Of Columbia has not yet ruled.

6
7 Respectfully submitted,

8 Dated: January 31, 2017

JACOBS KOLTON, CHTD.

9 By: /s/ John G. Jacobs

10 JOHN G. JACOBS

BRYAN G. KOLTON

11 *Attorneys For Plaintiff*

12 BEVERLY NUNES

13 and the Putative Class

14 Dated: January 31, 2017

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

16 By: /s/ David H. Kramer

17 DAVID H. KRAMER

18 *Attorneys For Defendant*

19 TWITTER, INC.

CERTIFICATION

I, David Kramer, am the ECF User whose identification and password are being used to file this JOINT CASE MANAGEMENT STATEMENT & [PROPOSED] ORDER. In compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from all of the signatories.

Dated: January 31, 2017

/s/ David H. Kramer

CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. The case shall remain stayed until further order of this court. Further, the parties shall inform the Court promptly upon the issuance of an opinion by the United States Court of Appeals for the District of Columbia in *ACA International, et al. v. Federal Communications Commission and United States of America*; Case No. 15-1211. ~~In addition, the Court makes the further orders stated below.~~

IT IS SO ORDERED.

Dated: February 2, 2017



Vince Chhabria
United States District Judge